

Consideration of amendments to 312 IAC 11-2, standards regarding activities along and within public freshwater lakes; Administrative Cause No. 13-125W

Recently the Corps of Engineer Districts, Detroit, Louisville, and Chicago reissued the Programmatic General Permit (PGP) for certain construction activities in waters of the United States within the State of Indiana under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. These activities are also regulated by the Department of Natural Resources under the Lake Preservation Act and related rules, IC 14-26-2 and 312 IAC 11. The Districts also expanded the PGP to include certain construction activities in some waters of the United States that are regulated as floodways under the Flood Control Act, IC -14-28-1, and as Navigable Waterways under IC 14-29-1.

The Programmatic General Permit is an outgrowth of a cooperative effort by the Corps of Engineer's District Offices, the Department of Environmental Management, and the Department of Natural Resources to develop a joint permit for some construction projects in Indiana. Prior to this effort applicants had to file for individual permits with each of the three agencies. With the development of the PGP, some applicants can now obtain the approval of all three agencies using only the existing permit review process of the Department of Natural Resources, Division of Water. This process creates a "one stop shopping" opportunity for permit applicants and reduces costs, delays, and paperwork at all levels of government. The original PGP has recently been re-issued and expanded to include more project types and waterways; thereby, increasing the number of projects and applicants that might be eligible to seek a joint permit.

During the recent review period for the re-issuance and expansion of the PGP, the Corps, IDEM and DNR recognized a difference in the rules of the respective agencies which limits the utility of the PGP. Specifically, the Corps and IDEM apply the PGP to projects with lengths less than 300 feet but DNR's rules only allow projects with lengths of less than 250. This means that projects with lengths between 250 and 300 feet are not eligible for a joint permit.

In order to provide consistency among the federal and state permit regulations and to ensure that the maximum number of applicants receive the benefit of the PGP program, the Department of Natural Resources requests that the proposed amendments to 312 IAC 11 be approved.

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule LSA Document #13-

DIGEST

Amends definitions in 312 IAC 11-2 for an area of special concern and for a natural shoreline, which apply to the regulation of public freshwater lakes under IC 14-26-2. The amendments would assist in the coordination of regulatory functions with the Indiana Department of Environmental Management and the U.S. Army Corps of Engineers. Effective 30 days after filing with the Publisher.

312 IAC 11-2-2; 312 IAC 11-2-14.5.

SECTION 1. 312 IAC 11-2-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-2 “Area of special concern” defined

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-15; IC 14-26-2

Sec. 2. “Area of special concern” means an area that contains at least one (1) of the following characteristics:

(1) An altered shoreline where bulkhead seawalls are at least ~~two hundred fifty (250)~~ **three hundred (300)** feet apart.

(2) Bogs, fens, muck flats, sand flats, or marl beaches identified by the division of nature preserves in the Natural Community Classification System.

(3) More than six hundred twenty-five (625) square feet of contiguous emergent vegetation or rooted vegetation with floating leaves. (*Natural Resources Commission; 312 IAC 11-2-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220; filed Jan 23, 2001, 10:05 a.m.: 24IR 1614; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661; filed Sep 14, 2005, 2:45 p.m.: 29 IR 464; readopted filed Jul 28, 2011, 10:28 a.m.: 20110824-IR-312110042RFA*)

SECTION 2. 312 IAC 11-2-14.5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-14.5 “Natural shoreline” defined

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-26-2

Sec. 14.5. “Natural shoreline” means a continuous section of unaltered shoreline or water line where the distance between lawful permanent structures is at least ~~two hundred fifty (250)~~ **three hundred (300)** feet. (*Natural Resources Commission; 312 IAC 11-2-14.5; filed Sep 14, 2005, 2:45 p.m.: 29 IR 464; filed Jul 11, 2006, 9:04 a.m.: 20060802-IR-312060009FRA; readopted filed Jul 28, 2011, 10:28 a.m.: 20110824-IR-312110042RFA*)